In the Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 111

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

EVELYN KIRCHNER, Administratrix of the Estate of ELLINOR GREEN VANCE,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California

STANLEY MOSK
Attorney General of the State of California

HAROLD B. HAAS
Assistant Attorney General of the State of California

Attorneys for Petitioner.

ELIZABETH PALMER
JOHN CARL PORTER
ASHER RUBIN
Deputy Attorneys General of the State of California

Of Counsel.

SORG PRINTING COMPANY OF CALIFORNIA, 180 FIRST STREET, SAN FRANCISCO 5

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The State of California, Department of Mental Hygiene, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered in the above case on January 30, 1964, rehearing denied February 26, 1964.

OPINIONS BELOW

The opinion of the Supreme Court of the State of California is reported in 60 A.C. 704, 388 P.2d 720, 36 Cal. Rptr.

488 (1964), and is appended to this petition as Appendix A.[1] The previous decision of the District Court of Appeal is reported in 29 Cal. Rptr. 312 (1963) and is appended to this petition as Appendix B.

JURISDICTION

The Supreme Court of the State of California entered its judgment in this case on January 30, 1964. A timely Petition for Rehearing, filed on February 14, 1964, was denied on February 26, 1964 without opinion.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. section 1257(3) since the validity of a state statute has been drawn into question on grounds of repugnancy to the Equal Protection Clause of the United States Constitution.

QUESTIONS PRESENTED

1. Is a statute requiring the husband, wife, father, mother or children of a patient in a state mental hospital to pay for the cost of treating said patient, within reasonable standards of financial ability, so purely arbitrary and devoid of rational basis as to violate the Equal Protection Clause of the United States Constitution?

2. When a state supreme court decides a case on an important constitutional ground, neither raised at trial, or on appeal, nor briefed or argued by either party, and directs the trial court to enter judgment, thereby foreclosing an opportunity to present evidence not *previously* material, has the losing party been denied due process of law within the meaning of *Saunders v. Shaw*, 244 U.S. 317 (1917)?

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1. Citations to this opinion will be cited as "Op-1" etc., in the Appendix.

STATUTES INVOLVED

The primary statute concerned in this case is California Welfare and Institutions Code section 6650, which provides, in part,[2]

> "The husband, wife, father, mother or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support and maintenance in a state institution of which he is an inmate."

STATEMENT OF THE CASE

The Department of Mental Hygiene brought an action against the estate of Ellinor Green Vance, a deceased adult daughter of Auguste Schaeche who has been a patient at Napa State Hospital since 1953 (CT 3:7-17).[3] The purpose of the suit was to obtain reimbursement for the care provided to Mrs. Schaeche for the four years preceding her daughter's death (CT 4:4-8).

Evelyn Kirchner is the duly appointed administratrix of the Estate of Ellinor Vance (CT 4:12-19), its principal beneficiary (CT 24:20-22), and also the guardian of the estate of Mrs. Schaeche, the incompetent (CT 16:2). Acting as administratrix of the decedent's estate, Evelyn Kirchner rejected the creditor's claim filed by the Department of Mental Hygiene (CT 5:5), but, as Mrs. Schaeche's guardian, offered to pay the claim out of the assets of the incompetent (CT 16:9-15). The Department of Mental Hygiene

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2. The full text of § 6650, § 6651 (qualifying § 6650 liability by ability to pay), § 6653 (requiring investigation of financial condition of patient and relatives), § 6655, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, all of which are here involved, are printed in full in Appendix D.

3. Designation to the transcript will be cited "CT."

refused to accept payment from the guardian and filed its action against the administratrix.[4]

By demurrer and then answer the defendant asserted that the defendant had *no* liability until the patient's assets were totally exhausted (CT 7:8-11). Nevertheless, no attempt was made to bring in the incompetent's estate as a party defendant. With the dispute limited to the single issue of priority, both parties moved for judgment on the pleadings. The Department's motion was granted and defendant's was denied. On appeal the District Court of Appeal affirmed (Opinion, Appendix B), but the Supreme Court of California reversed (Opinion, Appendix A).

HOW THE FEDERAL QUESTION AROSE

The constitutionality of the basic obligation imposed by section 6650 was not questioned prior to the California Supreme Court's holding that

> "the cost of maintaining the state [mental] institution, including provision for adequate care of its inmates, cannot be arbitrarily charged to one class [the immediate family of the patient] in the society; such assessment violates the equal protection clause." (Op-5)[5]

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4. The court states the defendant's Answer "alleged" the patient had in her guardianship estate "some $11,000 in cash." (Op-3) This is not correct. Defendant alleged that the patient's realty had been sold for approximately that sum which was held in escrow. (CT 16.) The same Answer shows a lien in excess of $6,425 in favor of the Department for the patient's care relating, for the most part, to a period for which suit would be barred by the statute of limitations. (CT 15:14-21.) This sum must be paid out of escrow. (CT 15.) Other claims such as attorney's and guardian's fees and the usual costs incident to a sale of real property must be paid. The total amount due the Department was far in excess of the total assets of the guardianship estate. (CT 26:21-24.)

5. The Constitution of the State of California has no Equal Protection Clause; therefore, all references to "equal protection" in the California Supreme Court's opinion and in this petition are to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Although this question was not raised, briefed or argued, the court undertook to condemn, *sua sponte*, the entire statutory scheme of liability. For this reason Petitioner's arguments on the constitutional question first appear in its Petition for Rehearing before the Supreme Court of California. The request therein for an opportunity fully to brief and argue such an unexpected but important federal constitutional question was denied.

No constitutional question was presented in the trial court.[6]

In the District Court of Appeal, the defendant's sole contention was that, as a matter of statutory construction, priority in the order of liabilities had to be imposed. She argued, "[I]f any liability is to be imposed on the daughter or on her estate, it must be shown that . . . the mother [the patient] had *no funds*. . . ." (Emphasis added.) (App. Op. Br., p. 6) The assertion that due process and equal protection required a priority (App. Op. Br., p. 6) was "made without analysis or citation of authority." (Opinion, District Court of Appeal, Appendix B, p. 18)

Both before the District Court of Appeal and before the Supreme Court of California, the constitutionality of the basic obligation of close family members to extend support to one another in state hospitals was expressly conceded.[7]

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6. See Points and Authorities of both parties in Clerk's Transcript, enclosed as part of the record.

7. "It is clearly established under the case law of this state that one who has a primary obligation to support the incompetent is liable for support [in a state mental hospital] under W.&I.C. § 6650. . . ." (App. Op. Br., p. 4.)

"[I]f the daughter were a person primarily liable for the support of the incompetent . . ., the question of improper classification would not arise." (Pet. for Hear., p. 7-8.)

A case where the patient was an *adult* child was distinguished. "The obligation of a parent to support an afflicted child is an absolute one and has existed from time immemorial." (Pet. for Hear., p. 8.)

Defendant's use of *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 329 P.2d 689 (1958) [upholding the constitutionality

No constitutional argument was made other than for a priority in the order of liabilities.

The Department's position was that Section 6655 of the Welfare and Institutions Code stated that payment from the patient could *not* be exacted if, as a result, she would be a burden on society on release from the hospital. Conceding it would be arbitrary to preserve more than a modest[8] estate for the patient, petitioner urged that equal protection did not demand that it "impoverish each patient without regard to his or her age, dependents or financial circumstances" (Resp. Br., p. 18; Resp. Ans. to Pet. Hear., p. 13) before family members could be required to share the medical cost in accordance with their ability to pay.[9]

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

1. The Issue Here Presents an Important Federal Constitutional Question Not Previously Considered by This Court.

The California Supreme Court has decided a federal constitutional question not previously considered by this Court; whether requiring close family members of a patient in a state mental hospital to contribute, within reasonable standards of ability to pay, toward the expense of treating and maintaining said patient violates the Equal Protection

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of this liability against equal protection and due process attacks] (App. Op. Br., p. 6, and Pet. for Hear., pp. 7, 9) makes clear the basic obligation was not in question.

8. See also footnote 4, *supra*.

9. Contrary to the court's assertion that the Department claimed the power to "denude [the relatives] of *their* assets" (OP-8). (Emphasis by court.) Welfare and Institutions Code § 6651 (ability to pay provision) denies the Department the power to create economic hardships for any relative. *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d at 760-761, 329 P.2d at 698-9 (1958), affirms a right to judicial review of that determination.

Clause of the Fourteenth Amendment to the United States Constitution.

The determination that the Constitution *requires* the taxpayers to bear the full burden of such expense, regardless of the affluence of the patient's family,[10] cannot be reconciled with decisions of this Court which give wide discretion to state legislatures to determine such policy questions[11] and which declare that only *invidious* discriminations[12] are invalidated by the Equal Protection Clause.

2. Similar Laws in Forty-four Jurisdictions Are Placed in Jeopardy.

The writ of certiorari also should be granted because of the importance of the instant question to the forty-two states, the District of Columbia and the Commonwealth of Puerto Rico, which have laws similar in language but *identical* in principle to the statute here involved. The

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10. Apparently the California Supreme Court found an additional denial of equal protection in the fact that collection of medical costs is contingent upon meeting standards of the ability to pay. The court stated, "It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination." (Op-8). In the case cited for that proposition, *Dribin v. Superior Court*, 37 Cal.2d 345, 348-350, 231 P.2d 809, 811-812 (1951), the poor were denied a type of divorce available to the rich. The above principle seems quite proper in such a case. But in the present context, rich and poor both receive medical care, and ability to pay results in liability for some but not for others. This approach is a familiar one. *Cf.* Internal Revenue Code. Hence the California Supreme Court's analogy seems extremely inappropriate.

11. *Ferguson v. Skrupa*, 372 U.S. 726, 729-730 (1963); *Williamson v. Lee Optical*, 348 U.S. 483, 488-89 (1955); *Lincoln Federal Labor Union v. Northwestern Iron*, 335 U.S. 525, 536 (1949); *Day-Brite, Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Daniel v. Family Security Life Ins.*, 336 U.S. 220, 224 (1949).

12. *Williamson v. Lee Optical*, *supra*, at 489; *Ferguson v. Skrupa*, *supra*, at 732.

validity of all of these laws[13] is jeopardized until this Court resolves whether the Equal Protection Clause denies state legislatures the power to define family responsibilities. Even statutes limited to requiring affluent or insured husbands to pay for the care provided to a wife in a state mental institution are challenged by this decision.[14]

Although the holding strikes down only the statute dealing with support of the insane, its ramifications are much greater because in a dictum the court suggests all other welfare reimbursement statutes "may well be re-examined." (Op-8)[15]

Because of the wide publicity given this decision,[16] lawyers across the country are now attacking laws of their own states, on federal constitutional grounds, citing the decision below as persuasive authority.[17]

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13. See Appendix C for a compilation of such statutes. The fact that a state court has used the Equal Protection Clause to invalidate a law, similar to that in force in almost all of the other states, was a factor in the granting of certiorari in *N. Y. v. O'Neill*, 359 U.S. 1, 3 (1959) and *Unemployment Compensation Comm. of Alaska v. Aragon*, 329 U.S. 143, 145, n. 2 (1946). See also *McGee v. International Life Ins. Co.*, 355 U.S. 220, 221 (1957).

14. This proposition is demonstrated in footnote 27.

15. See footnote 30 for examples of such statutes.

16. See "Time," Feb. 14, 1964, p. 76; 32 U.S. Law Week, 2392.

17. The precise issues here involved are *now* pending before the New Jersey Supreme Court in *Department of Mental Hygiene v. Joseph L. Judd* (Docket No. A-686-62). *Kirchner* would be dispositive. The clerk of the court informs this office that no decision will be filed until the proceedings in *Kirchner* are final.

Also, on May 4, 1964 in *Pennhurst State School v. Estate of Samuel Goodhartz*, the Supreme Court of New Jersey, in a suit for reimbursement by the Commonwealth of Pennsylvania against the estate of the deceased father of its patient, reversed a dismissal of the suit based on procedural grounds. In remanding the case for trial, the court said: "The parties may there raise any and all issues they determine appropriate. . . . Thus, they may seek determination, *inter alia*, of the important constitutional and jurisdictional questions dealt with in the *Department of Mental Hygiene v. Kirchner*,

3. The Fiscal Stability of Mental Hygiene Programs Nationwide Is Endangered.

The writ should be granted because of the importance of this question to the fiscal stability[18] of state programs for the care of the mentally ill. All of the states imposing liability upon the family of the patient depend in some part upon revenues from these sources for the building and staffing of hospitals. The State of California will lose about $6,000,000[19] per year as a result of this decision. The potential financial impact nationwide cannot be documented upon this record. But it is clear that across the country, mental hygiene programs based on expected revenues of many millions of dollars are jeopardized by the continued citation of a decision which "directly challenges the right of a state to statutorily impose liability upon, and collect from, one adult for the cost of supporting [and treating] another adult" (Op-4) in a state mental hospital.

4. The Decision Below Is Erroneous.

The decision below is erroneous because (A) the classification herein is reasonable and (B) the cases cited below do not support the decision—on the contrary, they suggest most strongly that the court usurped the legislative function of deciding the wisdom of legislation.

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36 Cal. Rptr. 488, 388 P.2d 720 (1964) and *Calif. v. Copus*, [158 Texas 196, 309 SW 2d 277, *cert. denied*, 356 US 967.]"

Although the court did not express an opinion about *Kirchner*, they did point out that the statutes of both Pennsylvania and New Jersey "evidence a common policy *favoring* the imposition of responsibility upon financially able parents for the maintenance of their indigent, incompetent children in state institutions." [Citations omitted, emphasis added.] A copy of this as yet unpublished opinion, and its proper citation when available, will be provided to opposing counsel. The pendency of these cases and others punctuates the urgency for guide lines from this Court.

18. Such a consideration moved this court to exercise its discretion in granting a petition for writ of certiorari in *Alaska v. Am. Can Co.*, 358 U.S. 224 at 225 (1958), and the amount of money potentially involved apparently was a factor in granting the writ in *U. S. v. Zazove*, 334 U.S. 602, n. 17 (1948).

19. See Appendix E, Petition for Rehearing before the Supreme Court of California. This includes payments from medical insurance of both patients and dependents.

A. THE CLASSIFICATION HEREIN IS REASONABLE.

Manifestly not every classification denies equal protection of the law. Indeed, a classification is unconstitutional,

> "1. . . . only when it is without *any* reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having *some* reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such a law is called in question, if *any* state of facts reasonably can be conceived that would sustain it, the existence of that state of facts . . . must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon *any* reasonable basis, but is essentially arbitrary." *Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911). (Emphasis added.)

More recent decisions, although quoting and citing the above statements in *Lindsley* with approval, also add that "the prohibition of the Equal Protection Clause goes no further than the invidious classification."[20]

Until this decision, the California Supreme Court consistently followed the rule that to deny equal protection the classification must be "palpably arbitrary and beyond rational doubt erroneous."[21]

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20. *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955); and *Ferguson v. Skrupa*, 372 U.S. 726 at 732 (1963).

21. *Dribin v. Superior Court*, 37 Cal.2d 345, 351, 231 P.2d 809, 813 (1951). California has also consistently applied this principle and all of the same rules set forth in *Lindsley, supra*, in all equal protection cases previous to this one, for example, *Bilyeu v. State Emps. Ret. System*, 58 Cal.2d 618, 623, 24 Cal.Rptr. 562, 375 P.2d 442 (1963). No attempt, however, was made by the California Supreme Court in the instant decision to apply *any* of these principles to the case before it.

Here the critical question is whether requiring close family members of a patient to contribute within their means, towards the cost of treating said patient involves a classification that is "without *any* reasonable basis" or "is beyond rational doubt, erroneous."

This Court has never considered the precise question now at bench, but *every* state and federal court which has previously considered it has found the classification herein to be reasonable for civil commitments. The most recent decision is *Beach v. District of Columbia*, 320 F.2d 790 (1963), *certiorari denied*, 375 U.S. 943, 84 S.Ct. 351.

Section 21-318 of the District of Columbia Code is virtually identical to California's Welfare and Institutions Code section 6650. The District obtained a judgment against a father of an adult daughter for a portion of the cost of treating her in a District institution.

On appeal the judgment was affirmed by the Federal Court of Appeals which discussed the long history of this liability, noting that it was early recognized in England and had enjoyed complete acceptance in this country. The court then proceeded to enunciate the reasons why the imposition of such liability cannot be deemed arbitrary or unreasonable:

> "[W]hen the law turns also to the father for help, if he is able to give it, when the estate of the incompetent is insufficient, it does so only to *supplement* the *public responsibility*. Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. *It is not unreasonable*, it is *not a denial of due process*, for the law to *attach an enforceable obligation to the moral obligation* which exists in the usual family relationship of father and daughter." (Emphasis added.) 320 F.2d at 793.

The equal protection clause does not, by its terms, apply to the federal government; therefore the court was required to ground its holding on the due process clause although the rationale and language used were those of equal protection. The court's emphatic statement of the *reasonableness* of "attach[ing] an enforceable obligation to the moral obligation which exists in the usual family relationship" (ibid.) makes the court's reasoning directly applicable to equal protection cases[22] because it meets squarely and disposes of the contention that the classification is essentially arbitrary.

Hence it is appropriate to refer to both equal protection cases and to cases where "due process" objections were made and rejected. Without exception, support statutes involving classifications virtually identical to that here in issue were sustained as being neither arbitrary nor unreasonable. *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 37 L.R.A. 634 (1896); *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922); *In re Idleman*, 146 Ore. 13, 27 P.2d 305 (1933); *Commonwealth v. Zommick*, 362 Pa. 299, 66 Atl.2d 237 (1949); *Kough v. Hoehler*, 413 Ill. 409, 109 N.E.2d 177 (1956); *State v. Webber*, 163 Ohio St. 598, 128 N.E.2d 3 (1955); *Dept. of Public Welfare v. Haas*, 15 Ill.2d 204, 154 N.E.2d 265, 271 (1958).

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22. *Bolling v. Sharpe*, 347 U.S. 497 (1954), also a case from the District of Columbia, demonstrates the reasoning in *Beach* does come to bear upon the instant question. There, this Court pointed out (p. 499) that while equal protection may be a more explicit safeguard than due process, and hence not always interchangeable with it, "the concepts of equal protection and due process, *both stemming from our American ideal of fairness*, are not mutually exclusive." (Emphasis added.) *Cf. Detroit Bank v. United States*, 317 U.S. 329, 337-338 (1943); *Currin v. Wallace*, 306 U.S. 1, 13-14 (1938). The court then proceeded to strike down racial discrimination in the District of Columbia under the same basic rationale it used the same day in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) under the Equal Protection Clause.

The most succinct summary of the attitude of the courts of the several states on the constitutional question is found in a California case not mentioned in the instant decision, *State Commission in Lunacy v. Eldridge*, 7 Cal.App. 298, 304, 94 Pac. 597 (1908):

> "And, as to the proposition of the alleged unequal burden imposed upon one class, thus, as contended, discriminating in favor of another upon whom the burden is not cast, the answer is, we think, that the so-called unequal burden is only one springing from a natural duty which, as to its performance, the legislature has recognized by positive enactment. (Civ. Code, §§ 38, 206.)"

Only five years ago the court below, in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 329 P.2d 689 (1958), upheld this same liability against charges of denial of equal protection. The reasonableness of the classification was then justified by pointing out that,

> "From time immemorial it has been the natural primary obligation of the parent to bear the financial burden of caring for an afflicted child. [An adult in this case.] In this humanitarian age the state has assumed that obligation in the absence of the parent's ability to do so. This fact has not, however, entirely abolished the parental obligation. It has done so only to the extent provided by statute." 50 Cal.2d at 753, 329 P.2d at 694.

Reciprocal duties of support for the mentally ill between close family members pervade western civilization. They have been part of the common law since 43 *Elizabeth*, Chapter 2, Section 7 was enacted in 1601. *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 797-8 (1896), observed the duty was a principle of natural law and one which was enforced by the

courts of the civil law countries.[23] The Statute of Elizabeth was said to be intended to correct this "defect" in the English law and to "transform[ ] the imperfect moral duty into a statutory and legal liability." 46 N.E. at 798. See also *Beach v. Government of District of Columbia*, 320 F.2d 790, 792, n. 4 (1963).

The unanimity of the centuries-old acceptance of this liability throughout western civilization refutes the suggestion it is "purely arbitrary." "The Fourteenth Amendment did not tear history up by the roots. . . ." *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948).

B. THE CASES CITED BELOW DO NOT SUPPORT THE DECISION.

The court below found "dispositive of the issue before us" (Op-6) its holding in *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 28 Cal.Rptr. 718, 379 P.2d 22 (1963), in which the court had invalidated relative responsibility for the support and treatment of the *criminally* insane. The holding of *Hawley* is:

> "The Fourteenth Amendment, in declaring that a State shall not "deprive any person of life, liberty or property without due process of law," gives to each of these an equal sanction; it recognizes "liberty" and "property" as co-existent human rights, and debars the States from any unwarranted interference with either.' (*Coppage v. Kansas* (1915) 236 U.S. 1, 17 * * * It has further been declared that 'Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.'

23. See also 1 Blackstone, Commentaries 447-8 (Cooley's, 4th ed. 1899). Roman law unequivocably imposed a reciprocal duty of support between insane parents and adult children. See 12 The Civil Law (Trans. S. P. Scott) 62, quoting from the Code of Justinian. Book I, Extract of Novel 115, Chapter III.

(*Smith v. Texas* (1914) 233 U.S. 630 [34 S.Ct. 681, 682].)" 59 Cal.2d at 256.

A decision which finds "dispositive" a case whose sole constitutional authority is the repudiated doctrine of *Coppage v. Kansas*, 236 U.S. 1 (1915) [invalidating a statute outlawing "yellow dog" contracts] and *Smith v. Texas*,[24] is clearly infected with the infirmity of those cases. Any reliance today on *Coppage* is as misplaced as would be reliance upon *Lochner v. New York*, 198 U.S. 45 (1905), or *Adkins v. Childrens Hospital*, 261 U.S. 525 (1923). Over twenty years ago this Court refused to follow *Coppage*, stating:

> "The course of decisions [since *Adair* and *Coppage*] have completely sapped those cases of their authority." *Phelps Dodge v. Labor Bd.*, 313 U.S. 177, at 187 (1941).

And only last term this Court said,

> "The doctrine that prevailed in *Lochner*, *Coppage*, and *Burns* and like cases—that due process [or equal protection] authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).[25]

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24. 233 U.S. 630 (1914) (Justice Holmes dissenting). Statutory qualifications for freight conductor were held to be unconstitutional, apparently because the court did not believe them necessary. This decision is severely undermined by recent decisions giving wide latitude to legislatures to regulate occupations, for example, *Ferguson v. Skrupa, supra*, 372 U.S. 726 (1963) [debt adjusting by non-lawyers forbidden]. *Williamson v. Lee Optical, supra;* 348 U.S. 483 (1955) [forbidding opticians from duplicating lenses without a prescription].

25. Equally positive condemnations of *Coppage* were made in *Day-Brite v. Missouri*, 342 U.S. 421, 423, 425 (1949) and *Lincoln Union v. Northwestern*, 335 U.S. 525, 535-536 (1949). See also *Williamson v. Lee Optical*, 348 U.S. 483, 488-489 (1955). *Daniel v. Family Ins. Co.*, 336 U.S. 220, 224 (1949).

Surely, drawing even indirect support from *Coppage* further enfeebles the decision below.

The court below also relied *directly* upon *Hoeper v. Tax Commission*, 284 U.S. 206 (1931), in which this court invalidated a statute under which a state assessed an income tax against the husband measured by the sum of the income of both husband and wife. The California Court referred to *Hoeper* as if controlling on the question of whether a family relationship[26] is a permissible basis for classification and then quoted from the case the truism that a state is forbidden to deny equal protection of the laws (Op-7). Justice Holmes' dissent[27] to *Hoeper* (Brandeis and Stone concur-

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26. This court has always upheld, against charges of a denial of equal protection, *preferential* inheritance tax treatment for close family members as against strangers or collateral heirs. *Campbell v. Calif.*, 200 U.S. 87, 94 (1905).

27. "So far as the Constitution of the United States is concerned, the *legislature has power to determine what the consequences* of *marriage* shall be, and as it may provide that the husband shall or shall not have certain rights in his wife's property, and *shall or shall not be liable for his wife's debts*, it may enact that he shall be liable for taxes on an income that in every probability will make his life easier and help to pay his bills. . . . It is said that Wisconsin has taken away the former characteristics of the marriage state. But it has said in so many words that it keeps this one. And when the legislature clearly indicates that it means to accomplish a certain result within its power to accomplish, it is our business to supply any formula that the *eleganta juris* may seem to require." 284 U.S. at 220. (Emphasis added.)

The application of Justice Holmes' rationale to the case at bench would be that the decision as to the liability of family members for the support and treatment of each other is a *legislative*, rather than a judicial, determination.

That the decision herein seems to undermine liability even for one's spouse is clear from the following: The challenge to the statute goes to "the right of a state . . . to collect from one adult for the cost of supporting another adult [in a state mental institution]" (Op. - 3), the court's reliance upon *Hoeper* involving a husband and wi relationship, and the fact that the court distinguished (but did not approve) cases based upon the marriage contract as not considering whether there was a denial of "equal protection of the law to the servient spouse." (Op-4).

ring) is more compatible with current authorities[28] which thoroughly devitalize it. Whatever that case means today, it certainly cannot justify striking down this classification merely because it is based upon a family relationship.

To recapitulate briefly, petitioner has demonstrated two facts: First, that a liability so familiar throughout western civilization, so frequently examined by state courts of last resort, so universally enacted by the legislatures of the several states, cannot be said to be "purely arbitrary"; nor can it be said to "infringe fundamental principles as they have been understood by the traditions of our people and our law."[29] Second, it is obvious neither *Hoeper, Coppage, Smith v. Texas* nor any other case cited by the court below supports the holding that *this* classification is "without any reasonable basis." Then how can the decision below be explained? By the inescapable conclusion that the court below has usurped the function of the legislature and has

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28. For example, see *Fernandez v. Wiener*, 326 U.S. 340 (1945) upholding a federal estate tax measured by the value of the entire community property at the time of the death of the husband. See especially Justice Douglas' concurring opinion (at 365) in which, after referring to *Hoeper*, he states:

> "But I can see no reason why that which is in fact an economic unit may not be treated as one in law. For as Mr. Justice Holmes pointed out in his dissent, there is a community of interest 'when two spouses live together and when each usually would get the benefit of the income of each without inquiry into the source.'"

Albanese D'Imperio v. Secretary of Treasury, 223 F.2d 413, 415 (1 Cir. 1955), questions whether, in the light of later cases, "that case still speaks with authority." In addition, see *Ballester v. Descartes*, 181 F.2d 823, 829, (1 Cir. 1950), questioning if "*Hoeper v. Tax Commission* would be followed today even on its particular facts" in view of *Fernandez*. *Cf. Ballester-Ripoll v. Court of Tax Appeals*, 142 F.2d 11, 17 (1 Cir. 1944) (*cert. denied*, 323 U.S. 723), for a similar implication.

29. *Lochner v. N. Y.*, 198 U.S. 45, 76 (dissent).

taken on itself the task of deciding the *wisdom* of the legislation. This is clear from statements in its opinion such as:

> "we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle . . . and other social responsibilities. . . . From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined." (Op-7-8)[30]

Certainly the extent of development of the "social evolution," the scope of the "*parens patriae* principle" and "other social responsibilities" are matters not dictated by the Constitution but are properly left to legislative judgment.

"[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*." Justice Holmes dissenting in *Lochner v. N.Y.*, 198 U.S. 45, 75 (1905).

Petitioner recognizes that an "expanded recognition of the *parens patriae* principle" (Op-8) may have convinced many forward-looking and intelligent people that the state should provide to all citizens medical treatment for both physical and mental ills. Equally intelligent people hold opposite opinions. But the Constitution does not *require* free hospitalization for mental illness any more than it "enact[s]

30. Arguing from this dictum, and from the basic rationale of the court below, that where the legislature has defined any public responsibility, individual responsibility is constitutionally prohibited, attacks are being made on the validity of California Welfare and Institutions Code §§ 2181 (liability of adult child for aid to aged parent), 2576 (liability for general welfare assistance), 903 (support in county juvenile homes and camps), 914 (county hospitalization provided to ward of juvenile court), 5077 (support of mentally disordered, not in state hospital). *Every* state and county has laws similar to these. All will be under attack until the principle of the decision below is examined by this court.

Herbert Spencer's Social Statics." The Constitution leaves enough room for this to be a debatable question. And,

> "If our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision. We could strike down this law only if we returned to the philosophy of the *Lochner*, *Coppage* and *Adkins* cases." *Day-Brite Lighting, Inc. v. Missouri*, *supra*, 342 U.S. 421, 425 (1952).

Clearly the court below no longer believes this liability to be debatable. But from both its reasoning and its case authority, this decision is inescapably saddled with a discarded philosophy of constitutional law. It will be cited across the country in state courts and in petitions before this court as persuasive authority that the mental hygiene laws of forty-four states and *all* family support statutes of every kind are unconstitutional until this court grants review and provides definitive guidelines for all jurisdictions.[31]

5. The Decision Below Denied Petitioner Procedural Due Process.

Petitioner contends that the decision below denied it procedural due process in two particulars. First, it was not given an opportunity to be heard on the issue which was dispositive of the case. Second, no opportunity was given to present evidence, which would have been immaterial in the trial court under the then existing state of the law, but which bore directly on the question decided by the court.

The Statement of the Case and the Record filed herein make clear that the question of law on which the holding was based was not raised by the defendant. An examination of the briefs also shows it was never presented to or properly before any court below. In addition, the transcript of oral

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31. For cases *now* before the New Jersey Supreme Court see footnote 17, *supra*.

argument before the Supreme Court of California[32] demonstrates that nothing said by defendant's counsel or raised by questions from the bench apprised either counsel of that which has become the holding of the case.

The decision was especially unexpected because the same question was examined only five years before in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742 (1958) where the constitutionality of this liability was upheld. No attack was made on *McGilvery* by defendant, and he implicitly conceded its correctness at several points in his briefs. (See, *supra*, footnote 7.)

Petitioner specifically requested an opportunity to brief completely and argue such an important question (Pet. for Rehear., p. 3-5) but it was denied without opinion. Moreover, in reversing, the trial court was instructed to enter judgment for defendant, thus preventing the Department from submitting any further evidence.

The court emphasizes that the incarceration of patients is for the protection of society and that therefore the cost is solely society's obligation[33] (Op-5, 7). The unstated premise that mental illness is equatable with dangerous tendencies can be shown to be false,[34] and that the modern use

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32. Filed as part of the record before this court.

33. Conceding, *arguendo*, that there is a public benefit here, this is not incompatible with individual liability. The law is full of such cases. For example, streets are paved for the public good, yet benefited abutting property owners can be required to pay. In all welfare legislation the legislature has recognized a public responsibility; yet, in most, close relatives are required to assist to the extent of their ability.

34. See Report of Dr. Walter Rapaport, Pet. for Rehear., Appendix B, p. 2, stating in part, ". . . by and large the mentally ill cannot be considered as dangerous to society. It has been established by scientific studies that people who have been in our hospitals, or who are in our hospitals, commit less crimes of violence when com-

of public hospitals is *not* for incarceration,[35] but for medical treatment[36] which benefits inure primarily to the family. Restraints of every kind on the patient are being abandoned[37] and the custodial aspects of such hospitals are being discarded as a product of a "less enlightened era."[38]

The Department should have an opportunity to demonstrate by the presentation of evidence that the court's factual premises are false. Thus far, it has been denied that right.

Petitioner does *not* contend courts are bound in deciding cases by the issues presented by counsel to the court or are required to give notice before overruling a case.[39] However

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pared to the general population than those who have not been in our hospitals. . . ."

See also comments of Lloyd S. Nix, Judge of Superior Court, Psychiatric Department, Los Angeles, 34 L.A. Bar Bull. 291 (1959), quoted Pet. for Rehear., pp. 24-25.

35. Nothing could be more illustrative of this point than the history provided in the preface to New York Mental Hygiene Law, In McKinney's Consolidated Laws of New York, Annotated, Book 34-A, page XIII, it is stated,

> "With the advent of the term 'insane', which in itself connotes illness, the advance of the theory of cure rather than mere custody became more rapid. The authorities were recognizing that insanity as such was a condition akin to a physical ailment and one in which care and cure were becoming the fundamental objects, with custody a necessity in order to permit proper care and treatment and possible cure. The provisions of the Insanity Law were more humane and more carefully worded, giving further impetus to the impression that the subject to be controlled is one primarily of illness and not detention alone."

36. Ibid., Appendix B, p. 3.

37. Ibid.

38. See Appendix D, Pet. for Rehear.

39. Cases such as *Mapp v. Ohio*, 367 U.S. 643 (1961) are inapposite. The admissibility questions were argued below (367 U.S. at 671), and questions from the bench about overruling *Wolf v. Colo.* gave opposing counsel a chance to defend it. In addition, conviction on other evidence was possible on remand, whereas here judgment was entered for the defendant.

Petitioner does contend that when a radical change in the law is contemplated, which treats as dispositive an issue and question of law not raised, briefed or argued, procedural due process requires that the parties have an opportunity to brief and argue the point of law prior to the court's decision; and, if the unexpected point of law would make evidence not previously material become relevant, due process requires that the parties be given an opportunity to introduce it to a trial court.

This case is squarely within the rule of *Saunders v. Shaw*, 244 U.S. 317 (1917). There Justice Holmes noted:

> "But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here: The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or to take other precautions in advance." Id., at 320.

Equally in point is *Brinkerhoff-Faris v. Hill*, 281 U.S. 673 (1930) in which the Missouri Supreme Court had approved a dismissal of a complaint for failure to exhaust a previously non-existent administrative remedy.

There, as here, the dispositive issue "was not suggested by anyone in the entire litigation until the Supreme Court filed its opinion. . . .". (p. 677)

There, as here, "[N]o one doubted the authority of the [previously controlling] case until it was expressly overruled in the case at bar." (p. 677)

There, as here, a timely petition for rehearing filed and

asking for an opportunity to be heard was summarily denied without opinion[40] and plaintiff's complaint dismissed.

Justice Brandeis pronounced this court's holding that the state supreme court had "denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right." (p. 678)

Petitioner here has been denied those rights. A writ of certiorari should be granted to review this important federal question.

CONCLUSION

For the reasons discussed above, we respectfully submit that certiorari should issue to review the decision of the court below.

Dated, San Francisco, California,
May 20, 1964.

STANLEY MOSK
Attorney General of the State of California
HAROLD B. HAAS
Assistant Attorney General of the State of California
By HAROLD B. HAAS
Attorneys for Petitioner.

ELIZABETH PALMER
JOHN CARL PORTER
ASHER RUBIN
Deputy Attorneys General of the State of California
Of Counsel.

40. "The additional federal claim thus made was timely, since it was raised at the first opportunity [in the petition for rehearing]." (p. 678) *Brinkerhoff* necessarily holds that a petition for rehearing is not an opportunity to be heard. The California Judicial Council's Nineteenth Biennial Report (1963) indicates 98% of the petitions are denied.

(Appendices Follow)

Appendix A

In the Supreme Court of the State of California
In Bank

S. F. 21349

Department of Mental Hygiene,
Plaintiff and Respondent,
v.
Evelyn Kirchner, as Administratrix of the Estate of Ellinor Green Vance,
Defendant and Appellant.

OPINION

Defendant administratrix appeals from a judgment on the pleadings, in the sum of $7,554.22, entered against her in an action by the Department of Mental Hygiene of the State of California to recover the alleged cost of care, support, maintenance and medical attention supplied to Auguste Schaeche, mother of defendant's intestate, as a committed inmate of a state institution for the mentally ill. As will appear, we have concluded that the statute upon which the judgment is based violates the basic constitutional guaranty of equal protection of the law, and that the judgment should be reversed.

Plaintiff in its complaint alleges in substance that in January 1953 the mother, Mrs. Schaeche, was adjudged men-

tally ill[1] and by the court committed to Agnews[2] State Hospital where she had remained under confinement to the date the complaint was filed in April 1961; that the decedent, Ellinor Vance, was Mrs. Schaeche's daughter "and as such was legally responsible" for her committed mother's care and maintenance at Agnews; that pursuant to section 6651[3] of the Welfare and Institutions Code the Director of Mental Hygiene determined the rate for such care and maintenance, and "said charges were made continuously for every month" Mrs. Schaeche was a "patient" at Agnews; that for the period of August 25, 1956, through August 24, 1960, such charges totaled $7,554.22, none of which had been paid; that the daughter died on August 25, 1960, and in November 1960 plaintiff filed against the daughter's estate its creditor's claim for $7,554.22, which was rejected, and which sum plaintiff now seeks to recover.

Defendant in her answer denies that her intestate, the daughter, "was legally responsible" for the mother's care and maintenance furnished by the state at Agnews "or any

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1. Welfare and Institutions Code section 5040: " 'Mentally ill persons' means persons who come within either or both of the following descriptions:

"(a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint.

"(b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, treatment, care, or restraint."

2. Welfare and Institutions Code section 6500: "There are in the State the following state hospitals for the care and treatment of the insane, the mentally ill, and the mentally disordered: . . . 3. Agnews State Hospital near the City of San Jose. . . ."

3. Welfare and Institutions Code section 6651: "The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals . . . where there is liability to pay . . . shall be reviewed each fiscal year and fixed at the statewide average per capita . . . as determined by the Director of Mental Hygiene. . . ."

other place whatsoever"; denies any indebtedness to plaintiff; and furthermore alleges that the incompetent mother herself owns (in her guardianship estate) some $11,000 in cash, to which resort should first be had before attempt is made by the state to charge her children with the costs of her care. More specifically, defendant directly challenges the right of a state to statutorily impose[4] liability upon, and collect from, one adult for the cost of supporting another adult whom the state has committed to one of its hospitals for the mentally ill or insane. Both parties moved for judgment on the pleadings, the court granted plaintiff's motion and denied that of defendant, and from the ensuing judgment defendant appeals.

In support of the judgment plaintiff department relies upon the declaration in section 6650 of the Welfare and Institutions Code that "The husband, wife, father, mother, or *children* of a mentally ill person or inebriate . . . shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. . . ." (Italics added.)

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4. *Historical Background:*
At common law there was no liability on a child to support parents, or on parents to support an adult child. (See, e.g., *County of Los Angeles v. Frisbie* (1942) 19 Cal. 2d 634, 645-646 [11]; *Duffy v. Yordi* (1906) 149 Cal. 140, 141-142 ("at common law there was no legal obligation on the part of the child to [support a parent] . . . such obligation depends entirely upon statutory provisions"); *Napa State Hospital v. Flaherty* (1901) 134 Cal. 315, 316-317 ("The right to maintain any action against the father for the support of an adult child, if any such right exists, is purely a creation of the statute. No such right existed at common law"); 44 C.J.S., p. 175, fn. 79; p. 176, fn. 81; p. 183, fn. 79; 67 C.J.S., pp. 704-705; pp. 727-728, § 24; 39 Am. Jur., pp. 710-712; 41 Am. Jur. pp. 684-687.) We recognize that various states have undertaken from time to time to create an obligation upon children to support indigent parents and upon parents to support indigent adult children; some states have even purported to create and impose a support obligation on brothers and sisters and on grandparents and grandchildren. (See 41 Am. Jur., pp. 684-686, §§ 6-7; 67 C.J.S., p. 705, § 17; id., p. 728, § 24.)

The department, citing *Guardianship of Thrasher* (1951) 105 Cal. App. 2d 768, and *Dept. of Mental Hygiene v. Black* (1961) 198 Cal. App. 2d 627, asserts flatly that the liability purportedly imposed by section 6650 upon the persons therein designated is not only, in the language of the section, "a joint and several liability," but is absolute and unconditional, and that "the fact that the patient has assets of her own becomes completely immaterial." In *Thrasher* it was held (pp. 776-778 [3-8] of 105 Cal. App. 2d) that the husband of an incompetent committed to a state mental hospital was under the duty to support her therein even though she had estate of her own. That case is of small help to plaintiff here; manifestly, the basic obligation and relevant status of the *husband* arose from the marriage contract to which he was a consenting party and no consideration was given to the question as to whether imposing liability upon one spouse for support of the other in a state institution denies equal protection of the law to the servient spouse. (See also *Estate of Risse* (1957) 156 Cal. App. 2d 412, 421 [7].) However, in *Black* the court held the mother of a mentally ill person to be liable for the cost of the latter's support in a state hospital, with the declaration (p. 632 [2] of 198 Cal. App. 2d) that by reason of the provisions of section 6650 there was no merit to the contention "that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives." (See also *County of Lake v. Forbes* (1941) 42 Cal. App. 2d 744, 747 [3, 5], and *Janes v. Edwards* (1935) 4 Cal. App. 2d 611, 612, involving other and different statutes.) We proceed to the fundamental issue tendered by the case before us.

Recently in *Department of Mental Hygiene v. Hawley* (1963) 59 Cal. 2d 247, the department, relying upon this same section 6650, attempted to collect from a father for the

cost of care, support and maintenance in a state hospital for the mentally ill or insane of his son who had been charged with crime, but before trial of the criminal issue (and obviously without adjudication of that issue) had been found by the court to be insane and committed to such state hospital. We there held (pp. 255-256 [6]) that "The enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions—subject of course, to the constitutional guaranties—who would endanger themselves or others if at large is a proper state function; being so, it follows that the expense of providing, operating and maintaining such institutions should (subject to reasonable exceptions *against the inmate or his estate*) be borne by the state." (Italics added.) We further held that recovery could not constitutionally be had against the father of the committed patient. This holding is dispositive of the issue before us. Whether the commitment is incidental to an alleged violation of a panel statute, as in *Hawley*, or is essentially a civil commitment as in the instant case, the purposes of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection and possible reclamation as a productive member of the body politic. Hence the cost of maintaining the state institution, including provision of adequate care for its inmates, cannot be arbitrarily charged to one class in the society; such assessment violates the equal protection clause.

Although numerous cases can be cited wherein so-called support statutes have been sustained against various attacks,[5] research has disclosed no case which squarely faced,

5. See, e.g., *State v. Bateman* (1922, Kan.) 204 P. 682, 683 [2]; *County of Los Angeles v. Frisbie* (1942) *supra*; 19 Cal. 2d 634, 645-646 [11]; *Mallatt v. Luihn* (1956, Ore.) 294 P.2d 871, 878.

considered, discussed and sustained[6] such statutes in the light of the basic question as to equal protection of the law in a case wherein it was sought to impose liability upon one person for the support of another in a state institution. No such constitutional issue appears to have received either consideration or documented resolution in *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742 (see pp. 754-761, esp. p. 760 [22] wherein in this respect it is commented merely that "the present claim of unlawful classification may not properly be sustained"); neither is there any mention of either the United States or the California Constitutions in *Department of Mental Hygiene v. Shane* (1956) 142 Cal. App. 2d Supp. 881, relied on in *McGilvery* with the statement (p. 752 [6] of 50 Cal. 2d), "The present case cannot be distinguished from that case." It is axiomatic that cases are not authority for propositions not considered (*McDowell & Craig v. City of Santa Fe Springs* (1960) 54 Cal. 2d 33, 38 [5]; *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal. 2d 719, 730 [4]), and the *Shane* case obviously does

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880 [3-13]; *Dept. of Mental Hygiene v. McGilvery* (1958) 50 Cal. 2d 742, 760-761 [23] [24]; (attacks based on asserted lack of procedural due process).

County of Los Angeles v. Hurlbut (1941) 44 Cal. App. 2d 88, 92-94 [1-5]; *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 754-760 [11-22]; *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 882 [19-25]; *Kelley v. State Board of Social Welfare* (1947) 82 Cal. App. 2d 627, 631-632 [2]; (attacks based on certain limited claims of discriminatory classification).

Maricopa County v. Douglas (1949, Ariz.) 208 P.2d 646, 649 [8-9] (attack based on claim of double taxation); *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 761 [25], and *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 883-884 [28]; (attacks on ground of taking private property for public use without just compensation).

State v. Webber (1955, Ohio) 128 N.E. 2d 3, 7 [3], and *State v. Troxler* (1930, Ind.) 173 N.E. 321, 323 [4] (constitutional question avoided or not discussed).

6. Contra, see *Department of Mental Hygiene v. Hawley* (1963) *supra*, 59 Cal. 2d 247.

not give substance to *McGilvery* on the subject constitutional issue.

We note that in *Hoeper v. Tax Commission* (1931) 284 U.S. 206, family relationship was not found an adequate basis for sustaining a statute under which the state attempted to assess an income tax against the husband measured in part by his wife's separate property income; the court there observed (p. 217), "The State is forbidden to deny due process of law or *the equal protection of the laws* for *any purpose whatsoever.*" (Italics added.) Further, in *Estate of Tetsubumi Yano* (1922) 188 Cal. 645, 656-657 [14], blood relationship was found insufficient to constitute a basis for discrimination against a citizen minor whose father because of his race was (under a then held valid statute) ineligible for citizenship. (See also *Oyama v. California* (1948) 332 U.S. 633.) It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination (*Dribin v. Superior Court* (1951) 37 Cal. 2d 345, 348-350 [1] [holding that a statute purporting to authorize a divorce from an insane spouse but limiting it to only those who could prove financial responsibility, constituted "arbitrary and unreasonable class discrimination"]) and in the same case (at p. 352 [11]) we declared "It is elementary that 'The insane have always been regarded as subject to control on the part of the state, *both for their protection and for the protection of others.*'" (Italics added.)

Lastly, in resolving the issue now before us, we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle (see 44 C.J.S. 48, § 3; 67 C.J.S. 624; 31 Words & Phrases 99-101) and other social responsibilities, including The California Re-

habilitation Center Act (added Stats. 1961, ch. 850, p. 2228) and divers other public welfare programs to which all citizens are contributing through presumptively duly apportioned taxes. From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined. Illustrative of California's acceptance of this principle is the provision of section 6655 of the Welfare and Institutions Code that payment for the care and support of a patient at a state hospital "shall not be exacted . . . if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital." Thus, the state evidences concern that its committed patient shall not "become a burden on the community in the event of his discharge from the hospital," but at the same time its advocacy[7] of the case at bench would seem to indicate that it cares not at all that relatives of the patient, selected by a department head, be denuded of *their* assets in order to reimburse the state for its maintenance of the patient in a tax supported institution. Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient. A statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification. (See *Blumenthal v. Board of Medical Examiners* (1962) 57 Cal. 2d 228, 237 [13]; *Bilyeu v. State Em-*

7. This is not a criticism of the department or its counsel; they are merely performing to the best of their ability the duty purportedly imposed by the statute.

ployees' Retirement System (1962) 58 Cal. 2d 618, 623 [2].) Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law.

Anything found in *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 754-761 [11-25] or in cases relying thereon (see e.g., *Dept. of Mental Hygiene v. Black* (1961) *supra*, 198 Cal. App. 2d 627, 632 [2]; *Estate of Setzer* (1961) 192 Cal. App. 2d 634, 637-638 [1]) contrary to the views herein expressed must be deemed disapproved.

The judgment is reversed and the cause is remanded with directions to enter judgment for defendant.

SCHAUER, J.

WE CONCUR:

GIBSON, C. J.
TRAYNOR, J.
McCOMB, J.
PETERS, J.
TOBRINER, J.
PEEK, J.

Filed—Jan 30 1964
William I. Sullivan, Clerk

Appendix B

In the District Court of Appeal of the State of California

First Appellate District—Division One

1 Civil 20576

Department of Mental Hygiene of the State of California,
Plaintiff and Respondent,
v.
Evelyn Kirchner, Administratrix of the Estate of Ellinor Green Vance,
Defendant and Appellant.

OPINION

Defendant Evelyn Kirchner, administratrix of the estate of Ellinor Green Vance, appeals from a judgment on the pleadings entered against her and in favor of the plaintiff Department of Mental Hygiene of the State of California for the sum of $7,554.22 and costs for the care, support, maintenance and medical attention of Auguste Schaeche, mother of defendant's intestate, in a state institution for the mentally ill.

Plaintiff's complaint filed April 19, 1961, alleges in substance: That on January 15, 1953, Mrs. Schaeche was duly adjudged mentally ill and committed to Agnews State Hospital where ever since said date she has been, and now is, a patient; that Ellinor Vance was Mrs. Schaeche's daughter and as such responsible for her care and maintenance at the above hospital; that pursuant to section 6651 of the Welfare and Institutions Code, the Director of Mental Hygiene determined the rate for the care and maintenance of Mrs. Schaeche and said charges were made continuously

for every month said incompetent was a patient; that for the period August 25, 1956, through August 24, 1960, there became due and owing the plaintiff department for the care and maintenance of said incompetent the sum of $7,554.22, no part of which has been paid; that the daughter died on August 25, 1960, and the defendant is the duly appointed, qualified and acting administratrix of her estate; that on November 3, 1960, the plaintiff filed in the daughter's estate, its creditor's claim for $7,554.22 for the care and maintenance for the above period of time, which claim was rejected by the defendant administratrix on January 25, 1961; and that the above amount of $7,554.22 is due, owing and unpaid.

Defendant's answer directly controverts only two paragraphs of the complaint: that alleging the daughter's legal responsibility for the care and attention furnished the mother at Agnews State Hospital and the final paragraph alleging the outstanding indebtedness from the daughter's administratrix, defendant herein. In the answer, therefore, defendant denies that the decedent was legally responsible for such care and maintenance and denies that she, as administratrix, is indebted to the plaintiff in any amount. Defendant by failure to deny them admits the remaining allegations of the complaint.[1] However the answer also sets forth two further and separate defenses in substance as follows: That on October 9, 1956, Ellinor Vance was appointed and qualified as the guardian of the estate of August Schaeche, an incompetent person; that on October

1. It should be noted therefore that the defendant admits the allegations that the Director of Mental Hygiene determined the rate and made continuous monthly charges for the care and maintenance of the incompetent, that for the period involved a total of $7,554.22 became due and owing to the department, and that no part of said sum was paid.

23, 1956, on petition of the plaintiff department filed in such guardianship proceeding, the court made its order giving the department an equitable lien on the estate of the incompetent for $6,425 for accrued charges for care, maintenance and medical attention for the period ending September 30, 1958, and for such other sums as may become due in the future; that after the death of Ellinor Vance on August 25, 1960, and on January 16, 1961, the defendant Evelyn Kirchner was appointed guardian of the estate of Auguste Schaeche; that said defendant as such guardian thereafter sold certain real property of the guardianship estate for the net amount of $10,903.35, which amount is on deposit at a local title company; that defendant as guardian of the estate of said incompetent[2] requested of the plaintiff department an itemized statement of the amount due for the care and maintenance of the incompetent so that such amount could be presented to the court and paid, but that the plaintiff refused and continues to refuse to render such statement; that because of such refusal "plaintiff should be estopped" from asserting its claim against the estate of Ellinor Vance; that, additionally, the plaintiff's rights have been adjudicated by the order made in the guardianship proceeding on October 23, 1958.

Plaintiff moved for judgment on the pleadings on the ground that there was no defense to its action. Defendant filed a similar motion on the ground that the complaint failed to state facts sufficient to constitute a cause of action against the defendant. The court below granted plaintiff's motion and denied defendant's motion. This appeal followed.

"The plaintiff, by his motion for judgment on the plead-

2. It should be noted that after January 16, 1961, Evelyn Kirchner defendant herein was not only administratrix of the estate of the daughter (Ellinor Vance) but also guardian of the estate of the mother (Auguste Schaeche).

ings, may recover judgment without the introduction of any evidence if his complaint states facts sufficient to constitute a cause of action, and if the answer . . . neither raises any material issue nor states a defense—that is, where the answer expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint, and sets up no new matter sufficient to bar or defeat the action." (39 Cal. Jur. 2d, Pleading, § 307, pp. 420-421; see Adjustment Corp. v. Hollywood Hardware etc. Co. (1939) 35 Cal. App. 2d 566, 569-570.) On such a motion the allegations of the answer must be taken as true and the plaintiff admits, for the purpose of the motion, the untruth of his own allegations, so far as they have been controverted by the answer. (Osborne v. Abels (1939) 30 Cal. App. 2d 729, 731.)

The material allegations of the complaint before us not controverted by the defendant establish that the incompetent Auguste Schaeche was a patient at Agnews State Hospital and that charges for her care and maintenance, at rates determined according to statute, are owing and unpaid to the department in the total amount of $7,554.22. Briefly summarized, the answer simply denies that the daughter of the incompetent was legally responsible for such indebtedness and further denies the allegation (conclusionary in form) that such amount is due, owing and unpaid from the daughter's administratrix. The answer in addition asserts that the daughter was an adult and that the mother's own guardianship estate had adequate funds to pay the indebtedness, which funds were themselves secured to plaintiff by an equitable lien. Thus the answer raises no factual issues requiring a trial but merely the legal claim of the defendant that the decedent daughter was not liable for the above charges. Plaintiff's motion for a judgment on the

pleadings was therefore an appropriate remedy to determine the basic controversy. (See Bank of America v. Hirsch Merc. Co. (1944) 64 Cal. App. 2d 175, 176, 181.)

Defendant contends here that (1) the estate of an adult child is not liable to the Department of Mental Hygiene for the care and maintenance of an incompetent mother in a state institution where the mother has adequate funds of her own to pay the charges therefor; and (2) the department was required to proceed against the mother's property on which it had an equitable lien. Neither contention has merit.

Section 6650 of the Welfare and Institutions Code,[3] in effect during the four-year period here involved, provides in relevant part: "The husband, wife, father, mother, or *children* of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, *shall cause* him to be properly and suitably cared for and maintained, . . . The husband, wife, father, mother, or *children of a mentally ill person* or inebriate, and the *administrators of their estates,* and the estate of such mentally ill person or inebriate, *shall be liable* for his care, support, and maintenance in a state institution of which he is an inmate. *The liability of such persons and estates shall be a joint and several liability,* . . ." (Emphasis added.)

The above statute imposes on the persons therein named an unconditional liability for the support and maintenance of a mentally ill relative in a state institution. (Dept. of Mental Hygiene v. McGilvery (1958) 50 Cal. 2d 742, 749-751; Dept. of Mental Hygiene v. Rosse (1960) 187 Cal. App. 2d 283, 286; Dept. of Mental Hygiene v. Shane (1956) 142

3. Unless otherwise indicated, all code references hereafter are to the Welfare and Institutions Code.

Cal. App. 2d Supp. 881, 883.)[4] It is clear that it imposes such liability on a daughter of a mentally ill person and on such daughter's estate.

Defendant argues that Ellinor Vance, being an adult daughter, had no "primary duty" to support her mother, Mrs. Schaeche, and that if any liability is to be imposed on the daughter or the daughter's estate, "it must be shown that not only the mother had no funds but that the daughter had the ability to pay."

The liability created by section 6650 is unconditionally imposed and not dependent on ability to pay. (Dept. of Mental Hygiene v. McGilvery, supra, 50 Cal. 2d 742, 749-751; Dept. of Mental Hygiene v. Mannina (1959) 168 Cal. App. 2d 215, 217.) Nor is it made dependent upon the existence of a "primary duty" to furnish support. The above statute makes no mention of such expression. It clearly imposes liability, as defendant concedes, on the estate of the mentally ill person. It also expressly provides that the liability of the persons and estates named in the statute "shall be a joint and several liability." The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person thus liable may be sued alone without joining any others also liable. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (Moreing v. Weber (1906) 3 Cal. App. 14, 21-22; McClintick v. Frame (1929) 98 Cal. App. 338, 343; Code Civ. Proc., § 383.)

4. It has recently been held in Dept. of Mental Hygiene v. Hawley (1963) 59 A.C. 259 that the liability imposed by section 6650 does not extend to the costs of support and maintenance of a person charged with crime who at the time of trial has been determined to be insane and, trial being postponed, is detained in a state institution pending his recovery.

Defendant relies on Guardianship of Thrasher (1951) 105 Cal. App. 2d 768 and Department of Mental Hygiene v. Black (1961) 198 Cal. App. 2d 627. She claims that these cases establish that, where a person has a "primary obligation" to support an incompetent, such person becomes liable under section 6650 regardless of the ability of the estate of the incompetent to pay. However, defendant argues, since an adult daughter has no such primary duty to support an incompetent mother who has an adequate estate, no liability arises under the statute. As we have pointed out, such a conclusion is untenable in the light of the clear provisions of the statute and the decisions interpreting it. Nor are the above two cases cited by defendant in conflict with what we have said. In *Thrasher*, supra, the court in effect held that it was error for the probate court to permit a husband who was guardian of his incompetent wife to reimburse himself from the wife's estate for amounts paid by him to the Department of Mental Hygiene for support and maintenance of the wife at a state hospital. The department had objected to the settlement of the accounts on the ground that the wife's support was the personal liability of the husband. On appeal the department contended that such liability rested on two separate bases: (a) the fact that the husband was primarily responsible for the support of his wife; and (b) the fact that he had a statutory liability under section 6650 for her support in a state hospital for the mentally ill. The court gave recognition to both obligations and harmonizing all of the applicable statutes held that the husband being primarily liable for the wife's maintenance could not draw upon her estate for it. However the court did not hold, as defendant here argues, that the husband's liability on the second basis, that is under section 6650, arose *only because* of his liability on the first basis, that is, because of his "primary duty"

as a husband to support his wife. In *Black*, supra, it was held that the Department of Mental Hygiene could recover from the estate of the mother of a mentally ill person the cost of the latter's support in a state hospital. The court stated: "The incompetent's mother being a person liable for her maintenance and care (Welf. & Inst. Code, §6650), there is thus no merit to the first of appellant's contentions that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives." (198 Cal. App. 2d at p. 632.) It is clear that the court held the statute imposed liability *ex proprio vigore* and not because of any independent "primary duty" on the part of the mother to support her daughter. Neither *Thrasher* nor *Black*, therefore, restrict or qualify the express declaration of joint and several liability found in section 6650.

Nor is either of the above cases authority for the proposition urged by defendant that the estate of the mentally ill person must first be exhausted before liability under section 6650 can be imposed upon any of the other persons named in the statute. As we have already pointed out, the liability of the persons and estates named in the statute is unconditional and absolute (Dept. of Mental Hygiene v. McGilvery, supra, 50 Cal. 2d 742) and "a joint and several liability" (§ 6650). It is therefore unimportant that the estate of the mentally ill person can be resorted to and unnecessary that such action first be taken. The contention here made by defendant that the assets of the incompetent must be first exhausted was flatly rejected, as noted above, in Department of Mental Hygiene v. Black, supra, 198 Cal. App. 2d 627, 632.

We observe that such was not always the law. After the 1941 amendment of section 6650 (Stats. 1941, ch. 916, § 1, p. 2503) that portion of the statute pertinent here read

substantially as it now reads except that it then provided: "The liability of such persons and estates shall be a joint and several liability *except that where the insane person or inebriate has an estate such estate shall be exhausted before liability passes to the relatives.*" (Emphasis added.) The 1943 amendment to the statute (Stats. 1943, ch. 1052, § 1, p. 2991) omitted the above italicized language. As was stated in People v. Valentine (1946) 28 Cal. App. 2d 121, 142: "It is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law. [Citation.] It has been repeatedly declared that where changes have been introduced by amendment it is not to be assumed that they were without design and, further, that by substantially amending a statute the Legislature demonstrates an intent to change the pre-existing law."

Defendant's final claim, made without analysis or citation of authority, that the instant judgment constitutes the taking of her property without due process and a denial of the equal protection of the laws need not detain us. Such claims were raised and set at rest in Department of Mental Hygiene v. McGilvery, supra, 50 Cal. 2d 742, 754-761.

We turn to the defendant's second contention on appeal. She argues: The plaintiff petitioned for and secured in the guardianship proceedings of Mrs. Schaeche an equitable lien on the estate of the incompetent for accrued charges in the sum of $6,425 and also for future charges. Since this lien is still in effect, the plaintiff Department of Mental Hygiene must proceed against such security in accordance with the "one form of action" rule prescribed by section 726 of the Code of Civil Procedure and therefore is precluded from proceeding against another liable on the obligation, namely this defendant. We find no merit in the above argument.

To support her position, the defendant is content to assert that the equitable lien here involved is the same security as a mortgage citing Estate of Moore (1955) 135 Cal. App. 2d 122, 131, in which the court quoted from Childs etc. Co. v. Shelburne Realty Co., (1943) 23 Cal. 2d 263, 268: "a mortgagee also has a security interest in the nature of an equitable lien." We are not favored with any further analysis of the legal equation which defendant thus proposes. Nor does defendant cite us to any authority holding that an equitable lien of the kind presented here falls within the pertinent statute.

Plaintiff claims that the instant equitable lien resembles more a judgment lien than a mortgage, since both the equitable lien and the judgment lien are nonconsensual and are designed to expand the creditor's remedies rather than to contract them as does section 726 of the Code of Civil Procedure. Plaintiff also points out: Code of Civil Procedure section 726 does not encompass all liens but by its terms prescribes the "one form of action" rule for the recovery of a debt or enforcement of a right "secured by *mortgage* upon real or personal property." (Emphasis added.) It later encompassed trust deeds as a result of the decision in Bank of Italy etc. Assn. v. Bentley (1933) 217 Cal. 644. It has been held not to apply to a vendor's lien (Jones v. Evans (1907) 6 Cal. App. 88), to a judgment lien (Lisenbee v. Lisenbee (1919) 42 Cal. App. 567) or to a mechanic's lien (Martin v. Becker (1915) 169 Cal. 301), the creditor not being required in any of such instances to first exhaust his security. We think plaintiff's analysis of the nature of the equitable lien before us, made in the light of the above precedents, is sound. Neither of the parties has referred us to, nor has our own research disclosed, any case holding that such lien falls within the purview of the statute. In view

of the above authorities, we are of the opinion that it does not.

However, even if we assume, *arguendo,* that the instant lien falls within the statute in question, we fail to see how this would give support to the position defendant takes. It is well settled that section 726 of the Code of Civil Procedure is for the protection of the mortgagor and that the liability of persons independently obligated to pay the same debt may be enforced without first resorting to the mortgage security. (Loeb v. Christie (1936) 6 Cal. 2d 416, 418 and cases there cited; Stephenson v. Lawn (1957) 155 Cal. App. 2d 669, 671.) Appel v. Hubbard (1957) 155 Cal. App. 2d 639 cited by defendant is not in conflict with the foregoing rule. The only person coming within the protective provisions of the statute is the mortgagor or, as the *Stephenson* case uses the term, the principal debtor, which corresponds here to the owner of the liened property, the incompetent Auguste Schaeche. The instant action is not against Mrs. Schaeche.

The judgment is affirmed.

Sullivan, J.

We Concur:

Bray, P. J.
Molinari, J.

Filed—Dist. Court of Appeal—First Dist., Mar. 15, 1963
Lawrence R. Elkington, Clerk

Appendix C

STATES HAVING STATUTES SIMILAR TO CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 6650

State	Citation to Statute
Alabama	Code of Ala., Tit. 45, § 257 (1958)
Alaska	Alaska Stat. § 47.30, 270 (1962)
Arkansas	Ark. Stats. (1947) 59-230
Colorado	Colo. Rev. Stats. (1953) Art. 1, Chap. 71, § 15
Connecticut	Conn. Gen. Stats. (1945) Chap. 119, § 2663
Delaware	Del. Code Chap. 51, Tit. 16, § 5127
Idaho	Idaho Code, § 66-354
Illinois	Ill. Ann. Stat. Chap. 91½, § 9-19
Indiana	Ann. Ind. Stat. Tit. 22, § 401(a)
Iowa	Iowa Code Ann. § 230.15 (1946)
Kansas	Kan. Gen. Stat. (1957 Supp.) Chap. 59, § 2006
Kentucky	K.R.S. (1955) 203.080
Louisiana	La. Rev. Stat. § 143 et seq. (1952)
Maine	Rev. Stats. Man., Chap. 27, § 135 (1954)
Maryland	Md. Code Ann. (1957) Art. 59, § 5
Massachusetts	Ann. Laws Mass. (1957) Chap. 123, § 96
Michigan	Mich. Stats. Ann. (1956) Chap. 127, Art. 14.816
Minnesota	Minn. Stats. (1953) § 526.01
Mississippi	Miss. Code (1942) § 6909-13
Montana	Rev. Code Mont. (1957 Supp.) Tit. 38, § 214
Nebraska	Neb. Rev. Stats. (1943) § 83-352
Nevada	Nev. Rev. Stats. 433.370
New Hampshire	N. H. Rev. Stats. Ann. (1955) § 8.41
New Jersey	Rev. Stats. N. J. (1937) 30:4-66
New York	Consolidated Laws N. Y. Mental Hygiene Law, § 24, subd. 2; § 80
North Carolina	Gen. Stats. N. C. § 143-121 (1958)

State	Citation to Statute
North Dakota	N. D. Century Code § 25-09-04 (1963)
Ohio	Ohio Rev. Code (1957 Supp.) Tit. 51, § 5121.06
Oregon	Ore. Rev. Stats. (1955 Supp.) § 428.101
Pennsylvania	Penn. Stats. Ann. Tit. 50, § 1361
Rhode Island	Gen. Laws R. I. (1956) § 26-3-17
South Carolina	Code of Laws, S. C., § 32-1028 (1962)
South Dakota	S.D.C. § 30.01A06 (1960)
Tennessee	Tenn. Code § 33-629
Texas	Tex. Ann. Stat., Art. 3196A (1952)
Utah	Utah Code Ann. § 64-7-6 (1953)
Vermont	Vt. Stats. (1947 Rev.) Chap. 281-6679
Virginia	Code of Va. (1956) § 37-125.1
Washington	Rev. Code of Wash., § 71.02.230
West Virginia	Code W. Va. § 2672
Wisconsin	Wis. Stats. Ann. § 52.01 (1953)
Wyoming	Wyo. Stats. § 25-81 (1963)
District of Columbia	Title 21, § 318
Commonwealth of Puerto Rico	Laws of Puerto Rico, Tit. 24, § 147e.

EXCERPTED PORTIONS OF SIMILAR LAWS IN OTHER STATES

New York Mental Hygiene Laws § 80.

"The father, mother, husband, wife and children of a mentally ill person, if of sufficient ability, and the committee or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained."

Illinois Statutes, § 9-19.

"If such patient is unable to pay, or if the estate of such patient is insufficient, the spouse of such patient, then the

parent or parents, child or children of such patient is liable for the payment of such sums, . . ."

Ohio, § 5121.06.

"(A) The following persons are jointly and severally liable for the support of a patient in a benevolent institution under the control of the department of mental hygiene and correction:

(1) The patient or his estate;

(2) The patient's husband or wife;

(3) A minor patient's father or mother, or both;

(4) The patient's adult sons and daughters;

(5) An adult patient's father or mother or both."

Vernon Texas Civil Statutes, Art. 3196a, § 2.

"Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so."

Appendix D

PERTINENT STATUTORY PROVISIONS

California Welfare and Institutions Code

Article 5. Property and Support of Patients

6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

(Amended by Stats. 1941, Ch. 916, by Stats. 1943, Ch. 1052, by Stats. 1945, Ch. 247, and by Stats. 1947, Ch. 625.)

6651. The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals for the mentally ill where there is liability to pay for such care, support, and maintenance, shall be reviewed each fiscal year and fixed at the statewide average per capita cost of maintaining patients in all state hospitals, as determined by the Director of Mental Hygiene. The rate thus fixed shall continue in effect until a new rate is fixed. The Director of Mental Hygiene may reduce, cancel or remit the amount

to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any mentally ill person or inebriate who is a patient of a state hospital for the mentally ill, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support, and maintenance or that the amount is uncollectible. In any case where there has been a payment under this section, and such payment or any part thereof should be refunded because of the death, leave of absence, or discharge of any patient of such hospital, such amount shall be paid by the hospital or the Department of Mental Hygiene to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any mentally ill person or inebriate dies at any time while his estate is liable for his care, support, and maintenance and other expenses at a state hospital, the claim for the amount due may be presented to the executor or administrator of his estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(Amended by Stats. 1939, Ch. 442, by Stats. 1941, Ch. 913, by Stats. 1943, Ch. 1052, by Stats. 1953, Ch. 549, by Stats. 1954, Ch. 3, by Stats. 1959, Ch. 186; and by Stats. 1961, Ch. 176.)

6653. The department shall, following the admission of a patient into a State hospital for the insane, cause an investigation to be made to determine the moneys, property, or interest in property, if any, the patient has, and whether he has a duly appointed and acting guardian to protect his property and his property interests. The department shall also make an investigation to determine whether the patient has any relative or relatives responsible under the provi-

sions of Section 6650 for the payment of the costs of transportation and maintenance, and shall ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges. All reports in connection with such investigations, together with the findings of the department, shall be records of the department, and may be inspected by interested relatives, their agents, or representatives at any time upon application.

6655. If any person committed to a State mental hospital has sufficient estate for the purpose, the guardian of his estate shall pay for his care, support, maintenance, and necessary expenses at the mental hospital to the extent of the estate. Such payment may be enforced by the order of the judge of the superior court where the guardianship proceedings are pending. On the filing of a petition therein by the department, showing that the guardian has failed, refused, or neglected to pay for such care, support, maintenance, and expenses, the court, by order, shall direct the payment by the guardian. Such order may be enforced in the same manner as are other orders of the court.

If at any time there is not sufficient money on hand in the estate of a committed person to pay the claim of a State mental hospital for his care, support, maintenance, and expenses therein, the court may, on petition of the guardian of the estate, or if the guardian fails, refuses, or neglects to apply, on the petition of the department, make an order directing the guardian to sell so much of the other personal or real property or both, of the person as is necessary to pay for the care, support, maintenance, and expenses of the person at the mental hospital. From the proceeds of such sale, the guardian shall pay the amount due for the care, support, maintenance, and expenses at the mental hospital, and also such other charges as are allowed by law.

Payment for the care, support, maintenance, and expenses of person at a State hospital shall not be exacted, however, if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital. If a certificate from the medical superintendent of the State hospital in which the person is confined as a patient is filed in the office of the county clerk with the papers in the guardianship proceedings of the patient, in which certificate the medical superintendent states that the patient is suffering from a chronic form of insanity, and that in his opinion a recovery is beyond reasonable hope and that the patient will in all probability continue to be a charge in a State hospital until death, such certificate shall be prima facie evidence that the patient is not likely to recover or to be released from the hospital, and the guardian shall pay the amount due for his care, support, maintenance, and expenses at the hospital and such other charges as are allowed by law out of any moneys of the estate in his possession.

(Amended by Stats. 1941, Ch. 917, and by Stats. 1943, Ch. 1052.)

CONSTITUTION OF THE UNITED STATES

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.